

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

 UNITED STATES of AMERICA) COURT FILE
) NOS. 19-CR-75 (ECT/HB)
) 19-CR-76 (ECT/HB)
)
) Courtroom 3B
 OTIS RAY MAYS, JR.) Friday, February 7, 2020
) St. Paul, Minnesota
) 11:30 A.M.

S E N T E N C I N G

BEFORE THE HONORABLE ERIC C. TOSTRUD
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (11:26 a.m.)

2 P R O C E E D I N G S

3 I N O P E N C O U R T

4 (Defendant present)

5 THE COURT: Good morning, everyone. Please be
6 seated.

7 We're here this morning for sentencing in United
8 States of America versus Otis Ray Mays, Jr. We have two
9 criminal file numbers here. The first is 19-75 and the
10 second is 19-76.

11 I'll ask counsel to note their appearances for the
12 record, please, starting with the Government.

13 MR. EBERT: Good morning, Your Honor. Matthew
14 Ebert on behalf of the United States, and I'm standing in
15 today in place of John Docherty, who is not able to be
16 present.

17 THE COURT: Good morning.

18 MR. EBERT: Good morning.

19 MR. RICHMAN: Robert Richman for Mr. Mays on
20 19-75. Mr. Mays is also present.

21 THE COURT: Good morning.

22 MR. RICHMAN: Good morning, Your Honor.

23 MS. PAULOSE: Your Honor, Rachel Paulose for
24 Mr. Mays on 19-76. Good morning.

25 THE COURT: Good morning.

1 All right. Mr. Mays previously pleaded guilty to
2 receipt of child pornography in violation of 18 U.S.C.,
3 Section 2252(a)(2) and (b)(1), and wire fraud in violation
4 of 18 U.S.C., Section 1343.

5 Mr. Richman and Ms. Paulose, you have received a
6 copy of the PSR and the addendum and discussed that with
7 Mr. Mays?

8 MR. RICHMAN: Yes, Your Honor.

9 THE COURT: Okay. And I understand we have a
10 number of objections here, and what I thought I would do --
11 let me just actually confirm first.

12 Mr. Ebert, as I understand it, the Government has
13 no objections to the PSR, is that correct?

14 MR. EBERT: That is correct, Your Honor.

15 THE COURT: Thank you.

16 All right. What I thought I'd do is just sort of
17 group these objections together by paragraph in the PSR. I
18 thought I'd describe the objections and then give you an
19 opportunity for further argument if that's something you
20 want to do here today.

21 So we've got three objections to paragraph 14 of
22 the PSR. First, Mr. Mays objects to paragraph 14 insofar as
23 it states that S.D., the then minor victim of the child
24 pornography offense, identified the defendant and two others
25 as individuals who played a role in her being commercially

1 sex trafficked. Mr. Mays denies that he played a role in
2 S.D. being sex trafficked.

3 Then second, again with respect to paragraph 14,
4 Mr. Mays denies that he was a member of the Black P Stones
5 gang or was involved with other gang members in commercial
6 sex trafficking activity. He argues that this allegation
7 should be removed from the PSR because it may adversely
8 affect his conditions of confinement.

9 And third, again with respect to paragraph 14,
10 Mr. Mays states that paragraph 14 does not mention that the
11 video which Mr. Mays voluntarily provided to the police is
12 the one he created to develop evidence of sex trafficking by
13 R.H.

14 That's a fair summary of Mr. Mays' objections to
15 paragraph 14?

16 MR. RICHMAN: Yes, Your Honor.

17 THE COURT: Okay. Anything further that you would
18 like to say about or with respect to those objections?

19 MR. RICHMAN: Your Honor, obviously these are
20 factual objections. The way -- the only way that the Court
21 can resolve them is, if the Court were intending to rely on
22 any of these facts in sentencing, would be for the
23 Government to ask for an evidentiary hearing to establish
24 these facts as valid sentencing factors. The Government has
25 not asked for an evidentiary hearing, and so as we stand

1 here today, there is no evidence before the Court from which
2 the Court can accept any of these allegations.

3 THE COURT: Thank you. Mr. Ebert, do you wish to
4 be heard with respect to those objections to paragraph 14?

5 MR. EBERT: Yes, please, Your Honor.

6 I think an objective reading of paragraph 14 is
7 that this is a recitation of events of how certain matters
8 came upon the radar screen of local law enforcement and
9 subsequently federal law enforcement. Paragraph 14 does not
10 read under in my view, Your Honor, respectfully, any
11 objective reading, as an assertion of the truth of the
12 matter that this defendant or any other individual is in
13 fact a gang member or in fact has done certain other
14 activities. It's merely a recitation of the chronology and
15 of the procedure of the events in 2017 that gave rise to
16 matters coming to the attention of law enforcement.

17 I don't, furthermore, think that the Probation
18 Office or the Government is asserting that the Court should
19 make a finding about gang membership or any other matters
20 that are being addressed by Counsel. This is simply a
21 factual recitation which is commonplace in virtually every
22 PSR in the federal system. So I think that the way that it
23 stands is the way that it should stand and I think that the
24 probation officer's recitation of the procedural and factual
25 predicate is correct.

1 THE COURT: Thank you.

2 MR. EBERT: Thank you.

3 THE COURT: Mr. Richman, anything further?

4 MR. RICHMAN: Your Honor, I think the allegation
5 about the Black P Stones gang stands somewhat apart. The
6 presentence report states: "[P]olice suspected the
7 defendant was a member of the Black P Stones gang"
8 Whatever that suspicion was based on, it should not be in
9 the presentence report. That's the type of allegation that
10 the Bureau of Prisons will rely on in making custody
11 classifications and the Bureau of Prisons is not going to
12 make the nuanced, lawyerly distinction that has been made by
13 the Government here. That allegation should be deleted.

14 With respect to the rest, as long as my colleague
15 has suggested that no one is suggesting that those
16 allegations are true, we have no problem with that, but with
17 respect to the Black P Stones gang, that should be deleted.

18 THE COURT: Thank you. I understood the material
19 in paragraph 14 as the Government did, as allegations,
20 nothing more, nothing less, that explained the background
21 leading up to the charges in this action, and the
22 allegations recorded in paragraph 14 of the PSR do not
23 affect the guidelines calculations and I will not consider
24 them in sentencing Mr. Mays.

25 The same is true with respect to Mr. Mays'

1 objection that the PSR omits that he provided a video to
2 Richfield police voluntarily. If that allegation were
3 included, again, it would not affect the guideline
4 calculation and I will not consider its absence in
5 sentencing Mr. Mays.

6 All right. Let's move to the next objection,
7 which is to paragraph 15 of the PSR.

8 Paragraph 15 states that during an interview with
9 the FBI and Richfield police:

10 "S.D. stated that the defendant and another
11 individual had discussed selling S.D. for commercial sex
12 acts, and the defendant had sex with S.D. on three separate
13 occasions without her consent as S.D. felt she had no
14 choice."

15 Mr. Mays denies that he ever discussed selling
16 S.D. for commercial sex. He admits that he had sex with
17 S.D. twice, not three times, denies that the sex was
18 nonconsensual. He says the claim that Mr. Mays essentially
19 raped S.D. is not supported by the evidence and should be
20 deleted from the PSR because S.D. was above the age of
21 consent at the time the two had sex. S.D. never claimed she
22 refused his advances, that Mays forced or coerced her, or
23 that Mays demanded sex in any way.

24 Mr. Richman, anything further to say with respect
25 to that series of objections to paragraph 15?

1 MR. RICHMAN: No, Your Honor. The Court's summary
2 I think encapsulates my objections.

3 THE COURT: Okay. Mr. Ebert, anything the
4 Government would like to add or say with respect to those
5 objections?

6 MR. EBERT: Briefly, Your Honor.

7 Once again, I think the Probation Office has
8 correctly and fulsomely recounted the very facts that give
9 rise to why the defendant is here today, and to sort of
10 tinker or try to challenge S.D.'s view of facts I think is
11 unwarranted and I think the way that it currently reads is
12 an accurate submission that reflects what S.D. has told law
13 enforcement and Probation. It also contains statements, to
14 the extent that they are true, that Defendant thinks are the
15 truth. Why certain portions should be removed unnecessarily
16 at the defendant's say-so is not clear and I think the way
17 that it's worded currently should stand.

18 Thank you.

19 THE COURT: Thank you. Mr. Richman?

20 MR. RICHMAN: Your Honor, my only concern about
21 that is that the Government has argued in its sentencing
22 pleading that the sexual relations between S.D. and Mr. Mays
23 was nonconsensual. They stated that as a fact
24 notwithstanding the fact that Mr. Mays has disputed it in
25 the presentence report and the Government has not requested

1 an evidentiary hearing. But if the Government is now saying
2 that it will stand down from that allegation and ask the
3 Court not to consider that unsubstantiated claim, then the
4 Court need not make findings.

5 THE COURT: Thank you. Mr. Ebert?

6 MR. EBERT: Your Honor, if I could just be heard.

7 THE COURT: Sure.

8 MR. EBERT: The Government is not standing down
9 from the contention which is firmly rooted in the factual
10 record before the Court that this was not consensual sexual
11 intercourse.

12 Before the Court are two versions of events, one
13 that has been provided to the Probation Office through the
14 statements that S.D. has made, and she has submitted that it
15 was nonconsensual. She was a minor.

16 A conflicting view of that comes from a convicted
17 fraudster, and on that basis alone I think there's ample
18 basis for the Court to credit the version of events from the
19 minor victim who the defendant engaged in sex acts with.
20 And if the Court wants me to go into any further details
21 about the nature of some of the activities in the videos, I
22 can do that to shed further light on the nonconsensual
23 nature of his intercourse with a young woman, a girl.

24 Thank you.

25 THE COURT: Thank you. I don't intend today as

1 part of this proceeding to resolve the dispute about whether
2 that sex was or was not consensual. Not because I don't
3 believe or credit one person's story or another based on the
4 materials that are before me, but because it doesn't affect
5 sentencing. It affects neither the guidelines calculation
6 nor any other element of the sentence that I think should be
7 imposed, or at least following the law as it suggests I'm
8 required to do in reaching an appropriate sentencing
9 decision here today.

10 So for that reason or for those reasons, I
11 determine that no ruling is necessary, again because the
12 objected to allegations that are recorded in paragraph 15 of
13 the PSR do not affect the guidelines calculation and I will
14 not consider them in sentencing Mr. Mays here today.

15 All right. The next objection concerns the
16 proposed enhancement under U.S. Sentencing Guidelines
17 Section 3B1.3. That guideline provides that "if [a]
18 defendant abused a position of public or private trust ...
19 in a manner that significantly facilitated the commission of
20 the offense," then we are to increase the offense level by
21 two levels. The enhancement "may not be employed if an
22 abuse of trust or skill is included in the base offense
23 level or specific offense characteristic." At the same
24 time, a defendant need not actually be in a position of
25 public or private trust, but rather the adjustment applies

1 "in a case in which the defendant provides sufficient
2 indicia to the victim that the defendant legitimately holds
3 a position of private or public trust when, in fact, the
4 defendant does not."

5 Ms. Paulose.

6 MS. PAULOSE: Thank you, Your Honor.

7 To apply 3B1.3 in this case would be virtually
8 unprecedented. There are only a handful -- for the reasons
9 that Your Honor I think has already quoted from the
10 sentencing guidelines.

11 As to the law, 3B1.3 is very rarely -- well, is
12 prohibited from being applied where the base offense level
13 already reflects the fraud as it does in this case, as it
14 would in any classic fraud case. And so that is a legal
15 prohibition that is reflected in the case law of the Eighth
16 Circuit as well as this district. If this enhancement were
17 used, any run-of-the-mill fraudster could be subject to this
18 enhancement for abuse of trust given that every fraud case
19 involves some abuse of trust, some sort of broken
20 relationship.

21 As to the facts, Your Honor, it's the burden of
22 the PSR to show why any alleged special skill furthered the
23 crime in this offense. So even if someone had training as a
24 doctor, or an attorney, or a bank executive, the PSR needs
25 to show how that furthered the crime in this case, and

1 there's no evidence that any special skill was used to
2 further the crime in this case.

3 First of all, even the Government agrees and
4 pointed out in its sentencing memo that Mr. Mays is not an
5 attorney, has no special skill, has a high school education,
6 and go out of their way to point out his lack of special
7 skill or education.

8 Secondly, there is nothing that Mr. Mays did that
9 would replicate what a lawyer does that furthered or
10 concealed this crime.

11 For example, he didn't file court pleadings. He
12 didn't -- to use a doctor example, he didn't prescribe
13 medication that he would have otherwise been prohibited from
14 doing. He didn't use the trust in the way that would have
15 been concealed because of the lawyer's status.

16 So to apply it in this case we think would be
17 inconsistent with the law of this district and the Eighth
18 Circuit. There are only a handful of cases where the
19 enhancement is actually applied for someone who doesn't
20 possess a professional degree or specialized training, and
21 in those cases the Government has proven that that training
22 was used to advance the skill in a way that is not present
23 here.

24 We do note, of course, that the Government did not
25 advocate for this at anytime and of course it would be a

1 violation of the plea agreement for them to do so now.

2 Thank you, Your Honor.

3 THE COURT: Thank you. Mr. Ebert, does the
4 Government have anything to say about the application of
5 this enhancement?

6 MR. EBERT: No, Your Honor, other than that it is
7 of course the case that the October 3rd, 2019 plea agreement
8 binds the Government in that regard.

9 THE COURT: Thank you.

10 All right. I'm going to overrule this objection.
11 I do not understand the law to say that abuse of trust or
12 skill is included in the base offense level. I believe it
13 is not.

14 I also find on the facts here that Mr. Mays
15 provided sufficient indicia to victims E.G.W. and I.M.W.
16 that he legitimately held a position of trust as a lawyer to
17 facilitate the commission of the offense, and to make that
18 finding I'm thinking about three or four specific facts in
19 particular here.

20 First, he preyed on the victims in a courthouse.
21 He asserted not only that he was an attorney, but also
22 provided a law firm name. He offered legal advice, or
23 advice that any lay person would understand is legal,
24 regarding legal problems. The entire scheme, I think, was
25 predicated on him being a lawyer and the victims believed

1 his position as a lawyer allowed him to resolve the
2 contrived legal matters that were central to Mr. Mays'
3 scheme. So I'm going to overrule that objection.

4 Lastly, Mr. Mays objects to paragraph 67 of the
5 PSR which adds one point to the defendant's criminal history
6 points based on his conviction for giving a peace officer a
7 false name.

8 Mr. Richman?

9 MR. RICHMAN: Your Honor, this point does not
10 change the Criminal History Category, but I wanted to
11 preserve the objection, but I have nothing to add from
12 what -- the position that has been summarized in the
13 addendum to the presentence report.

14 THE COURT: Thank you. Mr. Ebert?

15 MR. EBERT: Just briefly, Your Honor.

16 I think the Probation Office has sufficiently
17 responded with the relevant provisions to demonstrate that a
18 one-point assertion for that criminal violation's
19 appropriate and I think Probation has it correct.

20 THE COURT: Okay. I'll sustain that objection.
21 Mr. Richman pointed out that it doesn't impact Mr. Mays'
22 Criminal History Category, because even if resolved in his
23 favor he has eight criminal history points which still
24 places him in Criminal History Category IV, but I will
25 sustain that objection nonetheless.

1 All right. Anything further, Mr. Richman?

2 MR. RICHMAN: Do you mean as to the presentence
3 report objections, or as to sentencing arguments?

4 THE COURT: No, as to the -- sorry -- as to the
5 presentence report objections.

6 MR. RICHMAN: No, Your Honor.

7 THE COURT: Thank you. Ms. Paulose, anything
8 further as to the PSR?

9 MS. PAULOSE: No, thank you, Your Honor.

10 THE COURT: Mr. Ebert?

11 MR. EBERT: No, Your Honor.

12 THE COURT: All right. So with the exception of
13 the one objection that I sustained then, I'll adopt as
14 findings of the Court the factual statements contained in
15 the PSR, again, except as modified by my rulings here.

16 I'll grant a two-level downward adjustment in the
17 offense level for acceptance of responsibility.

18 Mr. Ebert, does the Government move for an
19 additional one-level reduction in the offense level for
20 acceptance of responsibility?

21 MR. EBERT: Your Honor, is it possible to reserve
22 that issue until the end of today's proceedings?

23 THE COURT: Why don't you come up to the podium if
24 you could. That microphone I don't think is either on or we
25 can't hear you.

1 MR. EBERT: I'm sorry, Your Honor.

2 THE COURT: That's all right.

3 MR. EBERT: Sorry about that to the court
4 reporter.

5 Is it possible to reserve that issue until later
6 in the proceedings after we've had further opportunity to
7 perhaps hear from the defendant?

8 THE COURT: Mr. Richman?

9 MR. RICHMAN: I object to that, Your Honor. Under
10 3E1.1(b), after the first two points have been awarded for
11 acceptance of responsibility, the third point is premised on
12 the timeliness of the plea. The Government has agreed at
13 the time of the plea agreement that Mr. Mays' plea was
14 timely. I object to the suggestion that if the Government
15 doesn't like Mr. Mays' sentencing allocution, they can at
16 their whim withhold the third point, and so we think that it
17 is timely for the Government to make the motion now.

18 THE COURT: Mr. Ebert, if you'll just give me a
19 minute here, I'm going to quickly read 3E1.1(b).

20 (Pause)

21 THE COURT: I agree with Mr. Richman on this one,
22 Mr. Ebert, but would add to that that I am very interested
23 in hearing Mr. Mays' allocution myself today and obviously
24 what he says matters a great deal to me. I don't know if
25 that places you -- or gives you any comfort, but --

1 MR. EBERT: Your Honor, I don't mean to create
2 unneeded controversy. The point I'm trying to make, I
3 think, is the one that the Court just articulated, which is
4 that at the end of the day, whatever modicum of credit will
5 continue to come to Defendant for acceptance of
6 responsibility I think would be based in part upon what he
7 has to say to the Court about the crimes. And so if the
8 Court is at this point inclined to give the two levels, then
9 consistent with 3E1.1, the Government would accordingly move
10 for the additional one-point reduction.

11 THE COURT: And I'll grant that motion.

12 MR. EBERT: Thank you.

13 THE COURT: Thank you. And I would add that I
14 think that acceptance of responsibility for purposes of that
15 motion and acceptance of responsibility for what sentence is
16 overall arrived at and appropriate here are distinct things
17 on some levels, if that makes any sense.

18 All right. Under the statute of conviction, one
19 of the statutes of conviction, Mr. Mays' conviction for
20 receipt of child pornography carries a five-year mandatory
21 minimum term of imprisonment.

22 I determine the guidelines apply as follows.

23 We have a Total Offense Level of 29; a Criminal
24 History Category of IV; an imprisonment range of 121 to 151
25 months; a supervised release range of five years to life; a

1 fine range in the amount of \$30,000 to \$250,000; a special
2 assessment that is mandatory in the amount of \$200; and
3 restitution that also is mandatory.

4 Mr. Ebert, does the Government have any objections
5 or corrections to those rulings given my findings on the
6 objections?

7 MR. EBERT: No, Your Honor.

8 THE COURT: Mr. Richman?

9 MR. RICHMAN: No, Your Honor.

10 THE COURT: Ms. Paulose?

11 MS. PAULOSE: No, Your Honor.

12 THE COURT: Okay. Thank you.

13 We have no departure motions, is that correct,
14 Mr. Ebert?

15 MR. EBERT: That's correct, Your Honor.

16 THE COURT: And, Mr. Richman, same question, no
17 departure motions, right?

18 MR. RICHMAN: Correct.

19 THE COURT: It's my understanding that the
20 Mandatory Victims Restitution Act of 1996 applies here.
21 Have the parties reached a stipulation with respect to
22 restitution?

23 Mr. Ebert?

24 MR. EBERT: Your Honor, I don't know that there is
25 a stipulation *per se*, but there is the dollar amount cited

1 in the plea agreement, and I think that that dollar amount,
2 if I'm not mistaken, is consistent with some of the
3 assertions of the defendant in the PSR as to the different
4 transactions that result in the total calculation. I think
5 off the top of my head it's \$341,222, if I'm not mistaken.

6 MS. PAULOSE: That's correct, Your Honor. It's
7 paragraph 139 of the PSR.

8 THE COURT: All right. And no objection to that
9 paragraph, so that that number then is locked in as a
10 restitution amount with respect to the lawyer fraud charge,
11 correct?

12 MR. EBERT: Yes, Your Honor.

13 THE COURT: But with respect to the child porn
14 charge, do we have a separate restitution question or
15 problem there?

16 MR. EBERT: No, Your Honor. We have conferred
17 with the victim of that offense and discussed that issue and
18 there is not a restitution request.

19 THE COURT: Okay.

20 MR. EBERT: Your Honor, if I might, turning back
21 to the first restitution issue, an additional item I just
22 want to clarify for the Court.

23 THE COURT: Sure.

24 MR. EBERT: On February 4th, the Government
25 received some additional records from the two victims of the

1 wire fraud offense and I provided those to the Probation
2 Office and to opposing counsel.

3 I just want to make the Court aware that we've
4 discussed some of those records with the victims and
5 discussed some of their rights and opportunities if they
6 were to further pursue some of the items that are included
7 in those records, because the number is higher than the
8 number, and based upon the result of those discussions, the
9 number in the plea agreement is what we've arrived at from
10 the victims that they would wish to see in the restitution
11 order.

12 THE COURT: All right. Thank you for that.

13 MR. EBERT: Thank you.

14 THE COURT: Okay. Mr. Mays, this is how things
15 are going to go from here.

16 Mr. Ebert's going to have an opportunity to speak
17 and advocate for a sentence that the Government thinks is
18 appropriate here. Once he's done I'll give both Mr. Richman
19 and Ms. Paulose an opportunity to speak, or if there's a
20 designated representative as between one of those two, that
21 person will have an opportunity to speak. And when he or
22 she or both are done, then you'll have an opportunity to say
23 anything that you'd like to say here today about an
24 appropriate sentence.

25 Does that make sense?

1 THE DEFENDANT: It does, Your Honor.

2 THE COURT: All right. And then when you're done
3 speaking, at that point we will hear from victims who wish
4 to be heard this morning.

5 All right. Mr. Ebert?

6 MR. EBERT: Thank you, Your Honor.

7 The Government, Your Honor, is requesting a
8 sentence per the plea agreement that was negotiated.
9 Consistent with that plea agreement, the Government is
10 asking for a sentence of 120 months. And, Your Honor, that
11 in the Government's view is a reasonable sentence under the
12 application of the advisory guidelines. It's warranted by
13 the facts of this defendant's background and by the nature
14 of his crimes, and it is a sentence that is sufficient but
15 not greater than necessary to achieve the fundamental goals
16 of sentencing.

17 However, even if the Court were to agree with some
18 or all of the defendant's frontal attacks on the
19 applicability of some or all of the guidelines provisions
20 themselves, and even if the Court were to set aside the
21 guidelines altogether, the United States respectfully
22 submits that a sentence of 120 months is nonetheless
23 eminently reasonable, warranted and necessary nonetheless
24 based upon the application of the 3553(a) factors.

25 And so first turning to Mr. Mays' history and

1 characteristics, even though he is just 26 years old, he has
2 already amassed a significant criminal history. He has a
3 criminal record in which he has rightfully earned placement
4 in Criminal History Category IV, and it's for such crimes as
5 stalking, burglary, and violating an order for protection.

6 His history reveals similar characteristics to
7 those that were central and prominent in his two pending
8 convictions before this Court; namely, his predatory nature,
9 cruelty, and a brazen desire to exploit the vulnerable.

10 Now, Defendant appears to suggest that his
11 criminality and his very serious crimes here are somehow the
12 apparent result of a turbulent upbringing and behavioral
13 issues that derive from his youth. To the extent that those
14 are parts of his background, there's no dispute that that is
15 unfortunate. However, countless people in this city and in
16 this district endure difficult circumstances in their youth,
17 from broken homes to some of the behavioral issues the
18 defendant cites to. But those countless other people most
19 certainly do not, they do not go on to commit repeated
20 criminal acts like Mr. Mays, and they certainly do not go on
21 to commit criminal acts that are as cruel and as destructive
22 as those perpetrated by the defendant here.

23 Simply put, Your Honor, there is nothing in
24 Defendant's history or background that would serve to
25 justify his crimes, and there is certainly nothing in his

1 background or his history that would serve to mitigate his
2 crimes, and so a 120-month sentence is appropriate in light
3 of his history and characteristics.

4 Moving on to the nature and the circumstances of
5 these offenses, both are extremely serious.

6 For one of his crimes, the fraud scheme, for
7 almost half a year he perpetrated a fraud scheme that could
8 hardly be more depraved. He targeted E.W. and I.W.,
9 parents, and he exploited the love and the concern that they
10 have for their son. He tricked them into believing their
11 son faced imminent criminal, federal terrorism charges, and
12 he tricked them into believing their son faced bogus legal
13 troubles, and for what? He terrorized them all so that he
14 could extract as much money from them for himself and to get
15 as much as he possibly could.

16 He manipulated I.W. because of her religion. He
17 exploited sensitivities unique to her faith by manufacturing
18 absurd lies, that the FBI was supposedly watching her son,
19 because according to the defendant, like I.W., her son was a
20 Muslim. This, Your Honor, is the nature and the
21 circumstances of this defendant's offense, depraved and
22 ruthless.

23 And, of course, it's not limited to fraud. With
24 equal amounts of ruthlessness and depravity, he engaged in
25 the child pornography offense for which he's convicted.

1 According to the submissions by the defense, by
2 the defendant's own reckoning, Mays somehow knew not only
3 that his victim was in fact a minor, but by his own
4 reckoning of the events to the Court, he understood her to
5 be a victim of commercial sex trafficking. That is
6 staggering. That means that knowing full well the unique
7 vulnerabilities of his minor victim, what did he do? He
8 proceeded to have sex with her and to further commit the
9 child pornography offense for which he's now convicted. It
10 shocks the conscience.

11 And so whether it is fraud or crimes involving
12 children, Mr. Mays' serious offenses have no place in
13 society, and respectfully, Your Honor, Defendant's sentence
14 must account for the audacity of his crimes against his
15 victims, for the magnitude of the financial crime that he
16 inflicted upon his fraud victims, and for the incalculable
17 emotional trauma that he has inflicted upon his victims.

18 His sentence must also account for the stunning
19 degree of greed, dishonesty, and disregard for his victims
20 that he has displayed time and time again, and the
21 Government respectfully asserts that a sentence of 120
22 months will in part account for the nature and seriousness
23 of Defendant's crimes.

24 Finally, Your Honor, a sentence of 120 months is
25 necessary to afford as much deterrence as possible and to

1 protect the public as much as possible.

2 The PSR at pages 10 through 19 recounts
3 Defendant's various run-ins with the law in just the last
4 few years. It takes nine full pages to capture his various
5 criminal conduct, involving orders for protection among
6 other crimes that harm the public. It speaks volumes about
7 the harm he inflicts upon the public generally, of course to
8 say nothing further about the harm that he's already
9 committed with the specific victims here.

10 In their statement to Probation, E.W. and I.W.
11 asserted that they in particular, the victims of one of his
12 current crimes, fear that if he is not kept in prison long
13 enough, then they fear that he will, quote, go on to destroy
14 some other person's life like he did ours, unquote, and I
15 think their statement is well put.

16 And for that reason, to protect the victims in
17 these two cases and to protect the public generally, the
18 United States again respectfully submits that this Court
19 impose a substantial sentence of 120 months.

20 Thank you.

21 THE COURT: Thank you. Mr. Richman?

22 MR. RICHMAN: Your Honor, before I begin, I want
23 to make a confession of sorts.

24 Mr. Mays had hoped and had arranged for his
25 mother, various family members and friends, to all be

1 present at the sentencing. The reason they're not here is
2 that I screwed up.

3 The sentencing in this case had been scheduled for
4 different days and different times. Somehow I had in my
5 calendar that the sentencing was today at 2:00. I
6 communicated that to Mr. Mays' mother several weeks ago and
7 she took steps to communicate to everyone who was going to
8 be here, which I think was going to be somewhere between ten
9 and 20 people.

10 It was yesterday afternoon that I became aware
11 that sentencing was today at 11:00. It didn't occur to me
12 to notify Ms. Mays. It wasn't until this morning at 10:00
13 when my client informed me that his mother still thought
14 that the sentencing was at 2:00. I called her. She was
15 extremely upset, but told me that she could not be here on
16 such short notice. I apologized profusely.

17 So I want the Court to know and for the record to
18 be clear that I made that mistake. That is the reason that
19 Mr. Mays' supporters are not here. I can assure the Court
20 that they wanted very much to be here.

21 With that said, Your Honor, let me turn to my
22 sentencing argument.

23 The only reason that Mr. Mays is facing a possible
24 punishment in double digits is because he happens to fall
25 into a bizarre gap in the law. While the age of consent for

1 sexual relations is 16 in Minnesota, the age of consent
2 under federal law for making visual depictions of that
3 conduct is 18. So while it is legal for a 16 -- for an
4 adult to have sex with a 16-year-old, if he takes a naked
5 picture of that same 16-year-old, that's a crime.

6 In this case S.D. was 17 years old at the time of
7 this offense. Mr. Mays was only seven years older. It was
8 perfectly legal for the two of them to engage in sexual
9 relations.

10 In ***United States vs. Rouse***, Judge Beam commented
11 critically on this situation. He found a prosecution in
12 similar circumstances -- and I quote -- "unseemly and quite
13 possibly unfair," and he urged a legislative solution to do
14 away with that gap. And while the Government talks about
15 this case shocking the conscience, in fact, there is nothing
16 about Mr. Mays' conduct with respect to the child
17 pornography that shocks the conscience. In fact, the
18 Government has to this day failed to justify this
19 prosecution in light of Judge Beam's criticisms, and yet it
20 is the child pornography guidelines that are driving the
21 sentence in this case.

22 In its sentencing memorandum I was very interested
23 to see how the Government characterized the severity of the
24 child pornography offense. First they said that S.D. was
25 victimized by nonconsensual sex, to which, as we've already

1 indicated, Mr. Mays strenuously objects. S.D. is in the
2 back of the courtroom. She may again claim that the sex was
3 nonconsensual and it may have been in her mind. That was
4 never communicated to Mr. Mays. We continue to dispute it.
5 And there is no evidence in the videos demonstrating that
6 S.D. was anything other than a willing partner.

7 Next they claim that S.D. was a victim of the
8 recording herself -- itself, yet again she was a willing
9 participant. This is not a case where there was some hidden
10 camera or surreptitious recording. It was well-known to
11 S.D. that the videos were being made. In fact, on one of
12 the two occasions that they engaged in relations they used
13 her phone, so she was not victimized by making recordings
14 that she at least at the time was a willing participant to.
15 She trusted Mr. Mays to make these recordings and he lived
16 up to that trust, never distributing the videos and, as the
17 Government has conceded in the plea agreement, never even
18 intending to distribute the videos.

19 And so as Judge Beam noted in **Rouse**, there was
20 really no victim to this crime, even though S.D. now may say
21 otherwise. And so faced with no victim and barely any
22 crime, the Government focuses its attention on the fraud.
23 It's no great surprise that its sentencing memorandum spends
24 six of its eight pages on the fraud, because it is the far
25 more serious of the two offenses, and that is the offense,

1 therefore, that should drive the guideline range.

2 Even with the enhancement for abuse of trust which
3 the Court has adopted, even though the parties agreed
4 otherwise in the plea agreement, the guideline range
5 applicable to the fraud is 41 to 51 months, and so the
6 Government's sentencing argument is really premised on a
7 clever bait-and-switch. The fraud is very serious, so
8 therefore you should apply the child pornography guidelines
9 and impose a ten-year sentence, yet it is the 41 to 51
10 months, the guidelines applicable to the fraud, which should
11 be the appropriate starting point.

12 The Government in this case achieved its purpose
13 by charging Mr. Mays with production of child pornography.
14 At the beginning of this case he faced a mandatory minimum
15 15 years for using his cell phone to record legal sex with a
16 17-year-old, 15 years. And so as the Government hoped,
17 Mr. Mays was bludgeoned into accepting a plea offer that
18 resolved both of these cases to get that 15 years off the
19 table. Its strategy was to increase its bargaining power
20 and it achieved that objective, but to now pretend that the
21 child pornography guidelines have any bearing whatsoever on
22 the offense conduct in this case and the appropriate
23 sentence is simply absurd.

24 A six-year sentence is a reasonable disposition to
25 address both of these offenses. The child pornography

1 guidelines are grossly out of whack. Even the Sentencing
2 Commission agrees that they're broken. Two-thirds of child
3 pornography defendants receive downward variances because
4 the courts have refused to give them any deference
5 whatsoever, and the situation here is substantially worse.
6 Not only were these legal sexual activities that were being
7 recorded on a cell phone, in addition, Mr. Mays receives a
8 five-level enhancement for essentially being a serial sexual
9 abuser for having a pattern of sexual abuse because he and
10 S.D. had sex twice. In the circumstances of this case that
11 enhancement is completely irrational.

12 He receives another five-level enhancement because
13 his nine video clips -- which should have been two had his
14 cell phone's software been a little different -- his nine
15 video clips somehow equate to 600 images, so he is treated
16 as among the worst of the worst child pornography offenders,
17 again, completely irrational.

18 Mr. Mays deserves to be punished for his fraud
19 offense. The guidelines say an appropriate punishment for
20 that offense is 41 to 51 months, a sentence of six years,
21 one that starts with the fraud guideline and adds a small
22 increase to reflect that Mr. Mays fell into a small
23 legislative gap, is the appropriate disposition in this
24 case, Your Honor.

25 And finally, Your Honor, we would ask that the

1 Court make a recommendation to the Bureau of Prisons that
2 Mr. Mays be permitted to serve his sentence at FCI Sandstone
3 so he can be as close as possible to his family.

4 Thank you, Your Honor.

5 THE COURT: Thank you. Ms. Paulose, are you
6 speaking today?

7 MS. PAULOSE: Mr. Richman is speaking for both of
8 us. Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Mays, this is your opportunity to say anything
11 you'd like to say with regard to an appropriate
12 sentence -- actually, yes, Mr. Mays. This is your
13 opportunity to say anything that you'd like to say with
14 respect to an appropriate sentence. I'm going to ask you to
15 come up to the podium right there and say what you'd like to
16 say.

17 (Defendant approaches podium)

18 THE DEFENDANT: Your Honor, I came prepared to
19 give a statement. I no longer think this statement is
20 appropriate for me to read.

21 I've listened to arguments on both sides, my
22 attorney as well as the Government, and I have to admit I am
23 wrong. The Weiners were victimized by what I did, a hundred
24 percent. There's no question about it. The \$341,000 that I
25 talked to Mr. Smith about is accurate. And like I told him

1 the day we met, that's something that I have to pay because
2 that's what I did.

3 My attorneys have told me it is my right to give a
4 statement here and that's what I want to do.

5 Your Honor, I am here today for my actions and my
6 actions alone. I understand that what I did was wrong in
7 these cases. Do I understand certain things about the law?
8 Of course not, because I am not an attorney, Your Honor.

9 I want to first apologize to the Weiners for the
10 appropriateness in the actions I incurred to make them have
11 the issues they have today.

12 In this last year I've had more time than I've
13 ever had before to do nothing but really sit and think about
14 what I've done. The worst punishment anyone could ever have
15 is to make someone sit in a room 22 hours a day and do
16 nothing but think. I've had time to see that I did nothing
17 but wrong in this case. That wrong was motivated by nothing
18 but greed and I apologize to the Weiners for that. I
19 apologize not only for the money that was taken, but the
20 pain I've caused their marriage, Your Honor.

21 Let me say I am completely responsible for the
22 financial issue and I am fully responsible and willing to
23 pay that back.

24 I now know I did what I did to the Weiners because
25 I felt like I was not smart enough to legally live a legal

1 lifestyle. Sitting in Sherburne County for the last year,
2 Your Honor, has shown me that I was foolish for believing
3 that, not only because what the Weiners have said, but
4 mainly what other people have said: I have a gift.

5 I plan on using the time I get here today, Your
6 Honor, to do nothing but use that gift in a more positive
7 way. I've looked at taking college courses and things like
8 that while I'm incarcerated in the BOP, and that's why we
9 requested Sandstone today, Your Honor, because that location
10 will help me look at certain courses that I want to take to
11 help me improve in positive ways.

12 I am very sorry for the conduct and I apologize to
13 anyone I may have harmed in any way, shape or form.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 All right. At this time we'll hear from any
17 victims that wish to be heard today. What I'll do is refer
18 to you by your initials.

19 Is it my understanding that victim I.W. wishes to
20 speak today, is that correct?

21 (Victim I.W. standing)

22 THE COURT: All right. Then I'd ask victim I.W.
23 to come to the podium, please.

24 (Victim I.W. approaches podium)

25 MR. EBERT: Your Honor, she has requested that we

1 stand alongside of her. Is that okay with the Court?

2 THE COURT: That's just fine.

3 MS. I.W.: Your Honor?

4 THE COURT: Good morning.

5 MS. I.W.: Good morning. My name is Issan Weiner.
6 My husband Earnie and I had our life ruined by that
7 (indicating) man, Otis Mays, Jr., or, as we knew him, Chris
8 Harrison. He destroyed our life in every way. He took all
9 our hard-earned, total of \$600,000, but worse than that, he
10 nearly destroyed our marriage and terrorized our son.

11 He -- he led us to believe our son going to prison
12 he will pay -- if we didn't pay to clear his name. His plot
13 was so evil, yet so convincing. We were desperate to do
14 whatever he said.

15 On his last visit with our son present he asked
16 for \$80,000 to save Adam from going to the jail. Adam was
17 crying, "Please, Mom, don't want to go to the jail. I will
18 kill myself." That's when we finally went to the police to
19 report all that had happened.

20 Your Honor, we hope that Otis will get maximum
21 sentence so he won't be free to do this to anyone else.

22 Thank you.

23 THE COURT: Thank you.

24 Just so that I make sure I understand how things
25 are proceeding here, is it my understanding that victim E.W.

1 does not wish to speak today, is that correct? I heard a
2 yes.

3 MR. EBERT: That is correct, Your Honor.

4 THE COURT: Thank you. And it's my understanding
5 that victim S.D. also wishes to speak today, so I would
6 invite her to come to the podium at this time.

7 (Victim S.D. approaches podium)

8 MS. S.D.: Hello, Your Honor.

9 THE COURT: Good morning.

10 MS. S.D.: I just want to say that I did meet him
11 when I was 16, but it wasn't -- I didn't meet him fully all
12 the way, just him. Before then, yes, I almost did get
13 exploited and he told me that he was a lawyer and that he
14 could possibly help me because of the person who was trying
15 to. Instead, it just got worse.

16 I mean, I throughout this whole case have
17 witnessed and seen various videos, various of not only
18 myself, but other girls, and I feel like it was wrong.

19 You said that you were this lawyer that wants to
20 help people get out of it, but instead you're making it.
21 And not only did he say that. The three other girls that
22 were involved in this I still talk to this day, and we all
23 say the same thing. He told us that we were going to jail
24 for child pornography when he was the one making it.

25 And I just -- I don't even know how to feel. It's

1 been awhile. I haven't seen him since I was 16, and to stay
2 here in court and still explain myself, I feel like I'm a
3 very strong person. I have a daughter and now I have to,
4 like, teach and show my daughter not even to be around
5 people like him, not to fall for anything, be your own
6 person. Like, it's very, very hard, because he literally
7 made me feel like I couldn't do anything. I was scared to
8 be outside. He knew where my school was, he knew my age, he
9 knew everything. He came and picked me up from school.
10 Literally, I had the FBI come to my school and tell them,
11 like, if he comes to my school, please -- like, please
12 arrest him or something. I had to tell my school the
13 situation that I was in. I didn't even feel safe at school.
14 I dropped out of school.

15 Like, it's just -- like, I feel like he's not
16 sorry. He's not remorseful. He feels sorry for fraud, but
17 he don't feel sorry for doing what he did to any of the
18 girls, either me. And I feel like he's not serving enough
19 time, because what if he gets out and still does the same
20 thing? Like, what if he -- what if my daughter gets older
21 and he finds my daughter and does the same thing? Like, I
22 don't -- I just feel like -- I just feel like it's wrong, I
23 really do.

24 Because at the end of the day, like, I've never
25 been scared and I've always been a strong person. I

1 testified to everything and I'm the only person. I don't
2 know what he told everybody else. But me, I'm strong and
3 I'm a good-hearted person and I just felt like this was not
4 supposed to happen to me. I feel like my life got ruined.

5 I never finished school because I was scared to go
6 outside. Like, my life is not together and, like, I have
7 nothing together because of this situation. Like, I sit
8 here in this court and hear what they're saying and I look
9 at my daughter and I'll be like -- it flashes back to me:
10 What if this happens to my daughter? And I just -- I'm
11 sorry.

12 THE COURT: It's okay.

13 MS. S.D.: I just feel like he's not sorry for
14 anything that he did. He's not. I feel like when I came in
15 this court today I was being antagonized and that I would
16 not come up here and speak, but I feel like my voice needs
17 to be heard for every girl that he's ever did this to. That
18 is, it's not right and that he does need to be remorseful
19 for everything that he did, even though it seems like he
20 doesn't.

21 And I just -- I pray for him and I wish the best
22 for him, but I feel like he's wrong. I mean, you can
23 forgive, but I will never forget what he did to me, Judge, I
24 will never, the things that were said, the things that was
25 did. And, like, I went through this whole case by myself,

1 nobody else. I testified, I got subpoenaed, I did
2 everything that I could to help these other girls and
3 everybody just vanished.

4 And I just want everybody to know that it's wrong
5 and that I just -- I don't think he's getting enough time.
6 I really don't, because ...

7 (Pause)

8 If I could, I would tell you the whole story from
9 beginning to end, but that would take a very long time. And
10 I know you have everything and all the evidence, pictures,
11 videos, everything, so you know and you've seen everything.
12 And I just -- I just really hope that he gets the time that
13 he really does deserve.

14 And that's all I really have to say, because I
15 don't want to take up all your time.

16 THE COURT: Thank you.

17 All right. At this time we'll take a ten-minute
18 recess. We'll return at approximately 12:40, at which time
19 we'll continue with the sentencing hearing.

20 (Recess taken at 12:28 p.m.)

21 * * * *

22 (12:41 p.m.)

23 IN OPEN COURT

24 THE COURT: Please be seated.

25 It's now time for sentencing. Mr. Mays, I'd ask

1 you to come to the podium, please, with Mr. Richman and
2 Ms. Paulose.

3 (Defendant, Mr. Richman, and Ms. Paulose approach
4 podium)

5 THE COURT: Otis Ray Mays, Jr., you have been
6 charged with and you have pleaded guilty to one count of
7 receipt of child pornography in violation of Sections
8 2252(a)(2) and (b)(1) of Title 18 of the United States
9 Code -- that's in Criminal File Number 19-75 -- and one
10 count of wire fraud in violation of Section of 1343 of Title
11 18 of the United States Code in File Number 19-76.

12 It is considered and adjudged that you are guilty
13 of these offenses based on your plea of guilty.

14 It is the judgment of the Court that you, Otis Ray
15 Mays, Jr., be committed to the custody of the Bureau of
16 Prisons for imprisonment for a term of 132 months.

17 I'll recommend FCI Sandstone.

18 On release from imprisonment, it is ordered that
19 you serve a supervised release term of ten years.

20 The law requires me to review with you today the
21 conditions that you must abide by while you are on
22 supervised release, so I'm going to do that now. At the
23 conclusion of that, I'll ask you or invite you to be seated
24 again and I'll explain the reasons for my sentence.

25 While on supervised release you must comply with

1 the follow mandatory conditions:

2 You shall not commit any crimes, whether federal,
3 state, or local.

4 You shall not unlawfully possess a controlled
5 substance.

6 You shall refrain from any unlawful use of a
7 controlled substance and submit to one drug test within 15
8 days of release on supervised release and at least two
9 periodic drug tests thereafter as determined by the Court.

10 You shall cooperate in the collection of a DNA
11 sample as directed by the United States Probation Office.

12 And you shall notify the Court of any material
13 change in your economic circumstances that might affect your
14 ability to pay the restitution or special assessment that
15 I'll also order as part of your sentence.

16 It is also required that you abide by the standard
17 conditions of supervised release that have been adopted by
18 this district, and a copy of those will be provided to you
19 at a future date.

20 While on supervised release, you must comply with
21 the following special conditions:

22 You shall complete an immediate assessment or
23 participate in a program for substance abuse as approved by
24 the probation officer upon release or relapse during the
25 term of supervised release. That program may include

1 testing and inpatient or outpatient treatment, counseling,
2 or a support group. Further, you shall contribute to the
3 costs of such program as determined by the Probation Office
4 Co-Payment Program, not to exceed the total cost of
5 treatment.

6 You shall submit your person, residence, office,
7 vehicle, or an area under your control to a search conducted
8 by the United States Probation Office or supervised
9 designee, at a reasonable time and in a reasonable manner,
10 based upon reasonable suspicion of contraband or evidence of
11 a supervision violation. You shall warn residents or third
12 parties that the premises and areas under your control may
13 be subject to searches pursuant to this condition.

14 You shall not possess or use a computer or have
15 access to any online service capable of accessing
16 pornography or engaging in financial transactions without
17 the prior approval of the U.S. Probation and Pretrial
18 Services Office. Your cooperation shall include, but not be
19 limited to, allowing installation of a computer and Internet
20 monitoring program and identifying computer systems,
21 Internet-capable devices, and similar memory and electronic
22 devices to which you have access. Monitoring may include
23 random examinations of computer systems along with Internet,
24 electronic, and media storage devices under your control.
25 The computer system or devices may be removed for a more

1 thorough examination, if necessary, and again, you shall
2 contribute to the cost of such monitoring services, based on
3 ability to pay, as deemed appropriate by the U.S. Probation
4 Office.

5 You shall not possess, view, access, or otherwise
6 use child pornography.

7 You shall provide the probation officer access to
8 any requested financial information, including credit
9 reports, credit card bills, bank statements, and telephone
10 bills.

11 You shall not associate with persons under the age
12 of 18 except in the presence of a responsible adult who is
13 aware of the nature of your background and current offense
14 and who has been approved by the probation officer.

15 You shall participate in sex offender and/or
16 mental health treatment as approved by the probation officer
17 and shall submit to risk assessment which may include, but
18 is not limited to, physiological testing and polygraph/truth
19 verification testing. Polygraph testing may be used
20 following completion of your primary treatment as directed
21 by the probation officer to monitor adherence to the goals
22 and objectives of treatment. Sex offender assessments and
23 treatment are to be conducted by a therapist approved in
24 advance by the Probation Office. Further, you shall
25 contribute to the costs of such treatment as determined by

1 the Probation Office Co-Payment Program, not to exceed the
2 total cost of treatment.

3 You shall have no contact with the victims. That
4 includes letters, communication devices, audio or visual
5 devices, visits, or any contact through a third party as
6 well without the prior consent of the probation officer.

7 You shall be prohibited from participation in any
8 form of gambling. You shall not enter any casino or
9 gambling establishment. This prohibition includes, but is
10 not limited to, online gambling, charitable gambling,
11 wagering, pull tabs, lottery or lottery scratch-off games or
12 the like.

13 You shall be prohibited from incurring new credit
14 charges or opening additional lines of credit without
15 approval of the probation officer.

16 You shall refrain from purchasing or possessing
17 any electronic equipment, including video and still cameras,
18 which allows for covert monitoring or photography, without
19 the prior approval of the probation officer.

20 I'll impose no fine.

21 I'll order restitution in the amount of \$341,222.

22 The interest requirement is waived in accordance
23 with 18 U.S.C., Section 3612(f)(3).

24 Over your period of incarceration you must make
25 payments toward your restitution obligation of either

1 quarterly installments of a minimum of \$25 if working
2 non-UNICOR, or a minimum of 50 percent of your monthly
3 earnings if working UNICOR.

4 I recommend that you participate in the Inmate
5 Financial Responsibility Program while incarcerated.
6 Payments are to be made payable to the Clerk, United States
7 District Court, for disbursement to the victims.

8 You must pay a special assessment in the amount of
9 \$200 to the United States. That's due immediately.

10 I'll not require you to pay any assessment to the
11 Domestic Trafficking Victims Fund, because I find that you
12 are indigent.

13 Pursuant to 18 U.S.C., Section 2253, and Rule
14 32.2(b)(4) of the Federal Rules of Criminal Procedure, your
15 interest in the property described in the preliminary order
16 of forfeiture is forfeited to the United States. That's the
17 HP Envy laptop computer.

18 At this time, Mr. Mays, I would invite you and
19 Mr. Richman and Ms. Paulose to be seated and I'll explain
20 the reasons for my sentence.

21 (Defendant, Mr. Richman, and Ms. Paulose seated)

22 THE COURT: In determining what sentence to
23 impose, I've treated the range recommended by the guidelines
24 as the starting point and the initial benchmark as the law
25 requires. I have not presumed that the guidelines range is

1 reasonable. I've instead considered all of the factors
2 described in 18 U.S.C., Section 3553(a), including the need
3 for the sentence to be sufficient but not greater than
4 necessary to comply with the purposes set forth in Section
5 3553(a) (2).

6 Having considered all of those factors, including
7 the nature and circumstances of the offense and the history
8 and characteristics of Mr. Mays, I find that the sentence
9 I've imposed is sufficient but not greater than necessary to
10 reflect the seriousness of Mr. Mays' offenses and to provide
11 just punishment for those offenses, to deter Mr. Mays from
12 committing crimes in the future, to deter others from
13 committing this or similar crimes in the future, to protect
14 the public from Mr. Mays, and to provide Mr. Mays with
15 needed care, treatment, and training.

16 In particular as to the sentence of imprisonment,
17 when I talk about the history and characteristics of the
18 defendant, I usually start by describing what I think are
19 mitigating factors. Those aren't easy to find here.

20 It is true that Mr. Mays faced challenges in his
21 upbringing. I'm thinking here of his parents' divorce, his
22 mother's drug use, and his adolescent mental health
23 challenges, but these pale in comparison to others who I
24 have seen in his position.

25 He did not grow up in poverty. He did not grow up

1 amid violence, for example. The fact is that the challenges
2 Mr. Mays faced are faced by many who did not resort to
3 crime. The fact is that Mr. Mays benefited from an
4 educational system that tried to meet his needs with
5 individualized educational programming. Many young people
6 face mental health challenges in their adolescence. They
7 don't resort to crime. When I try to answer the question of
8 why Mr. Mays engaged in these criminal acts, the bottom line
9 is that I see no clear mitigating factors.

10 The circumstances of the offenses suggest that we
11 face here a real need to protect the public and I am focused
12 on that. Having sex with a 17-year-old girl may not be a
13 crime itself, but recording it on multiple occasions
14 obviously is.

15 By Mr. Mays' own account, he victimized a girl who
16 was a victim already, and he knew it. That reflects the
17 same kind of penchant for manipulation and
18 get-what-I-want-at-all-costs-to-others mentality that is
19 reflected in the wire fraud conviction, and I am deeply
20 concerned about the facts of the child porn conviction.

21 I'm also deeply concerned about the facts of the
22 wire fraud. That was predatory, calculating, and consistent
23 again with the motive of doing anything for personal gain.
24 Mr. Mays stole a couple's retirement savings. He nearly
25 ended their marriage and his scheme required cold,

1 calculated planning. At the change of plea hearing and
2 again today, Mr. Mays strikes me as an intelligent and
3 well-spoken person, and I'm afraid here those attributes
4 were central to his ability to perpetrate certainly the
5 crime of wire fraud.

6 This was not behavior that was out of character
7 with an otherwise law-abiding life. Mr. Mays' criminal
8 history reflects no respect for the law. Indeed, he was on
9 probation for a felony stalking offense when he committed
10 these crimes, and I have not seen anything here to suggest
11 Mr. Mays has owned up to his mistakes or demonstrated
12 sincere remorse with respect to S.D.

13 The written statements that Mr. Mays provided as
14 part of his presentence investigation are unremarkable and
15 with respect to the crime involving S.D. include a classic:
16 "I'm sorry if my actions harmed a victim" non-apology
17 apology.

18 I appreciate that the longest previous sentence
19 Mr. Mays has served was 365 days in jail and that this
20 sentence is a much greater graduated sanction that I might
21 impose if I were thinking about only that fact; that is, the
22 graduated sanction piece. But other facts here persuade me
23 that a lengthy albeit within-guidelines sentence is
24 necessary, particularly, as I have said, to protect the
25 public from Mr. Mays.

1 I'd also here cite Sentencing Guidelines Section
2 3D1.4(c). It says that I'm to disregard Mr. Mays' wire
3 fraud conviction in determining a combined offense level,
4 but it also says that, quote, it "may provide a reason for
5 sentencing at the higher end of the sentencing range for the
6 applicable offense level."

7 Based upon the facts of this case, I am concerned
8 that Mr. Mays will do this again and I hope with all
9 sincerity that Mr. Mays proves me wrong.

10 I hope with all sincerity that he takes advantage
11 of the educational and vocational training offered through
12 the Bureau of Prisons in a way that improves his chances on
13 release.

14 I've reviewed information regarding sentences
15 imposed in this district on individuals who are situated
16 similarly to Mr. Mays. I find that the sentence will not
17 result in unwarranted sentencing disparities.

18 As we've already discussed, mandatory restitution
19 applies in these cases and I have ordered it for that
20 reason.

21 As to the term and conditions of supervised
22 release, I'll say that the drug treatment terms are
23 warranted by Mr. Mays' opioid abuse and his interest in that
24 programming.

25 The financial conditions are justified by the

1 nature of his wire fraud crime.

2 And the gambling limits are justified by his
3 history of gambling and losing large sums of money that he
4 probably could not afford to lose and he certainly cannot
5 afford to lose when he's facing a restitution obligation of
6 the order that we have here.

7 Mr. Mays, the law requires me to inform you of
8 your right to appeal, so I'm going to do that now.

9 You have the right to appeal your conviction if
10 you believe your guilty plea was unlawful or invalid for any
11 reason. You also have the right to appeal your sentence.

12 If you wish to appeal your conviction, your
13 sentence, or both, you must file a notice of appeal within
14 14 days of the filing of the judgment of conviction in this
15 case.

16 If you cannot afford to pay the costs of an
17 appeal, you can ask for permission to appeal
18 *in forma pauperis*. In other words, you can request
19 permission to be excused from paying any fees or costs. If
20 you make such a request, the Clerk of Court will file a
21 notice of appeal on your behalf.

22 The presentence investigation report will be kept
23 in the Court's files under seal. If you file an appeal,
24 that report will be forwarded to the United States Court of
25 Appeals for the Eighth Circuit.

1 Mr. Ebert, does the Government wish to move to
2 dismiss Counts 1 through 9 in File 19-75, and Counts 1 and 2
3 in 19-76 as to Mr. Mays at this time?

4 MR. EBERT: Consistent with the plea agreement,
5 yes, it does, Your Honor.

6 THE COURT: That motion's granted and those counts
7 are dismissed.

8 Mr. Richman, any filings that we need to be
9 worried about getting under seal here?

10 MR. RICHMAN: No, Your Honor.

11 THE COURT: Okay. Mr. Ebert, any sealing issues
12 from the Government's perspective?

13 MR. EBERT: No, Your Honor.

14 THE COURT: Okay. Mr. Mays will be remanded to
15 the custody of the United States Marshal at the conclusion
16 of this hearing.

17 Mr. Richman?

18 MR. RICHMAN: Your Honor, I would like to note my
19 objections for the record.

20 First -- and this applies to both 19-75 and
21 19-76 -- we object to the sentence as being substantively
22 unreasonable and procedurally defective.

23 In particular, with respect to the procedural
24 problems with the sentence, we object to the Court's failure
25 to give any consideration to the ways in which the child

1 pornography guidelines unduly inflate the sentencing range
2 in circumstances -- especially in circumstances such as this
3 one and Judge Beam's comments in the **Rouse** case.

4 In addition, Your Honor, with respect to the
5 conditions of supervised release, we object to the condition
6 with respect to use of a computer and the Internet. This
7 offense had nothing to do with the Internet. That is a
8 condition -- although it is very common in child pornography
9 offenses, so I'm sure it was recommended by Probation, it
10 has no application in this case. We object to it.

11 We object to the condition that he not associate
12 with people under the age of 18 without supervision.
13 Mr. Mays has a newborn daughter. This will prevent him from
14 having contact with her. There is nothing in the record to
15 suggest that Mr. Mays is a pedophile. Again, that condition
16 is not supported by the record.

17 We object to sex offender treatment for the same
18 reason.

19 We object to -- I didn't get all of it --
20 something about cameras that can be used for covert
21 monitoring. There was nothing covert in this case. I don't
22 know if that condition applies to a cell phone. I haven't
23 seen it, the condition, but I object to it.

24 In addition, Your Honor, we would ask -- in
25 addition to the recommendation of Sandstone, we would ask

1 that the Court also recommend that Mr. Mays be considered
2 for participation in the RDAP drug and alcohol treatment
3 program.

4 Thank you, Your Honor.

5 THE COURT: Certainly. Objections noted and I
6 will make that recommendation as well.

7 MR. RICHMAN: Thank you, Your Honor.

8 THE COURT: All right. Anything further,
9 Mr. Ebert?

10 MR. EBERT: No, Your Honor.

11 THE COURT: Mr. Richman, anything further that you
12 think we need to cover here today?

13 MR. RICHMAN: No, thank you, Your Honor.

14 THE COURT: Ms. Paulose, anything further that you
15 think we need to cover here today?

16 MS. PAULOSE: No, Your Honor.

17 THE COURT: All right. Thank you, everyone.
18 We'll stand adjourned.

19 (Proceedings concluded at 1:04 p.m.)

20 * * * *

C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter
for the United States District Court, do hereby
certify that the foregoing pages are a true and
accurate transcription of my shorthand notes,
taken in the aforementioned matter, to the best
of my skill and ability.

/s/ Timothy J. Willette

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